EXHIBIT E

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VIA EMAIL ONLY

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RE: ***Alterra Am. Ins. Co. v. National Football League, et al.*** **No. 652813/2012**
Discover Prop. & Cas. Co. v. National Football League, et al., **No. 652933/2012**

Dear Counsel:

As you know, this firm represents Defendants, TIG Insurance Company, The North River Insurance Company, and United States Fire Insurance Company, and has been designated as liaison counsel for all of the insurer parties (collectively, the "Insurers"), in the above captioned matter.[1] We write on behalf of the Insurers in furtherance of our meet and confer teleconference with you (along with counsel for the XL insurers and Travelers insurers) on August 30, 2018, and to outline various deficiencies in your clients' (collectively, the "Member Clubs")[2] objections and responses to the 32 individual document subpoenas served on the Member Clubs by the Insurers (the "Subpoenas" or "Requests").

As expressed on our recent teleconference, the Insurers are disappointed that the Member Clubs have not produced any documents responsive to the Insurers' Requests, and that you continue to refuse to even describe what efforts, if any, your clients have undertaken to collect documents responsive to the Subpoenas. The current status of the Member Clubs' response efforts is particularly troubling given that the first Subpoena was served over a year

[1] The other Insurers are Discover Property & Casualty Insurance Company, St. Paul Protective Insurance Company, Travelers Casualty & Surety Company, Travelers Indemnity Company, Travelers Property Casualty Company of America, Continental Insurance Company, Continental Casualty Company, Allstate Insurance Company, solely as successor in interest to Northbrook Excess and Surplus Insurance Company, formerly Northbrook Insurance Company, Bedivere Insurance Company, ACE American Insurance Company, Century Indemnity Company, Indemnity Insurance Company of North America, California Union Insurance Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Federal Insurance Company, Great Northern Insurance Company, Vigilant Insurance Company, Munich Reinsurance America, Inc., XL Insurance America Inc., XL Select Insurance Company, American Guarantee and Liability Insurance Company, Arrowood Indemnity Company, and Westport Insurance Corporation.

[2] The "Member Clubs" are all 32 NFL teams, which you represent and on behalf of which you have served responses and objections to the Insurers' subpoenas.

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ago, the vast majority of the Subpoenas were served by the end of September 2017, and the Insurers have been conferring with you about the Requests since that time. The Insurers' conclusion based on our August 30, 2018 call is that none of your clients have collected any responsive documents, with the possible exception of written document retention policies. If that is not accurate please describe the collection efforts that have been made to date and when we can expect to see production of any responsive documents.[3] As to the record retention policies, please forward those immediately, as they may assist in focusing our ongoing discussions about the Subpoenas. To be clear, the Insurers never agreed that the Member Clubs could refrain from efforts to gather responsive documents, or that the Member Clubs' individual obligations with respect to any of the Subpoenas were in any way reduced or suspended, pending further communications with the Insurers. The Member Clubs' several obligations to comply with the Subpoenas are (and have been) ongoing and will not be deferred or suspended pending further discussions.

You have requested that the Insurers undertake an effort to "prioritize" their Requests in order to "streamline" the production process. The Insurers do not believe any such "prioritization" is required. All of the Insurers' Requests seek documents that are both relevant and important to the issues in the coverage litigation and are well within the scope of permissible discovery. However, in an effort to work cooperatively with the Member Clubs (which the Insurers expect to be reciprocated), the Insurers will proceed as requested. By "prioritizing" the Requests as outlined below, the Insurers do not waive, withdraw or in any way modify their Requests. Nor do they agree that the Member Clubs are not obligated to respond fully to all of the Requests. This prioritization is presented merely as an accommodation to the Member Clubs to enable actual production of documents immediately, without the need to resort to motion practice.

I. "Prioritized" Requests

Pursuant to your request, and in an effort to assist the Member Clubs in their initial document collection efforts, a subset of the Insurers' Requests for prioritization is set forth below. The Insurers repeat that all of their Requests are important to the claims and defenses at issue in the underlying litigation and continue to request that each and every Request be fully complied with.

As a preliminary matter, attached is a set of search terms that the Member Clubs may use to more efficiently conduct an initial search of their electronically-stored information ("ESI"). This is not an exhaustive list of relevant terms, but merely a potential means to assist

[3] If any collection efforts have been made, providing the Insurers a description of these efforts and the documents collected, as requested several times on the call, would be a significant step forward. It would allow the Insurers to coordinate their response to your request that they "prioritize" their discovery requests with what the Member Clubs actually have collected.

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the Member Clubs in their initial collection efforts with respect to ESI. Each Member Club should produce all non-privileged documents in its possession, custody, or control identified using these terms (and any others the Clubs deem pertinent) that are responsive to the Requests. If you have any questions about these terms, we would be happy to discuss them with you.

As for the Insurers' individual Requests, we suggest that the Member Clubs "prioritize" the following categories. These are mere suggestions; if the Member Clubs believe their collection and production efforts can be expedited by focusing on other Requests first, by all means please do so. Again, please let us know if you have any questions.

- Request No. 1. All Documents and Communications relating to any research or studies conducted by the [Club] or the NFL related to Alleged Brain Injury, the long-term effects or risks of head trauma sustained in the play of football, and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.

- Request No. 2. All Documents and Communications relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.

- Request No. 4. All Documents and Communications between the [Club] and any other NFL team or teams relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.

- Request No. 8. All Documents and Communications between the [Club] and any equipment manufacturers, including but not limited to, helmet manufacturers, relating to Alleged Brain Injury, including but not limited to the potential long-term effects or risks of head trauma sustained in the play of football and/or the potential relationship between head trauma and subsequent Alleged Brain Injury.

- Request No. 11. All lists, databases, compilations, or spreadsheets maintained by the [Club] containing data about current or former players of the [Club], including but not limited to name, date of birth, dates of NFL career, documented concussions, and Alleged Brain Injuries sustained, or any similar information.

- Request No. 13. All Documents and Communications relating to any workers compensation claim for Alleged Brain Injury filed by any current or former player of the [Club].

- Request No. 29. All Documents and Communications related to any indemnity agreements between the [Club] and the NFL, including Section 3.11(c) of the Constitution and Bylaws of the National Football League.

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- Request No. 30. All Documents and Communications related to any indemnity agreements between the [Club] and any equipment manufacturers, including but not limited to, helmet manufacturers.

- Request No. 32. All Documents and Communications relating to the book *League of Denial*.

- All Documents and Communications (including communications between each Member Club and the NFL) regarding the defense and/or settlement of the MDL Action, the funding of defense and/or settlement costs for the MDL Action, evidencing any costs incurred by each Member Club with respect to the defense and/or settlement of the MDL Action, and/or memorializing or evidencing any requests for a Member Club's approval of the settlement or any Member Club's approval of the settlement (Request Nos. 22-27).

- Any Request seeking Documents, Communications, or other information about concussion, head trauma, Alleged Brain Injury, or death sustained by specifically named players, or seeking Documents or Communications unique to certain Member Clubs (discussed further in Section II.C.3.). *See* Falcons Subpoena, Request Nos. 37-38; Bears Subpoena, Request Nos. 38-41; Cowboys Subpoena, Request Nos. 37-39; 49ers Subpoena, Request Nos. 37-38; Packers Subpoena, Request Nos. 37-40; Chiefs Subpoena, Request Nos. 37-38; Chargers Subpoena, Request Nos. 37-38; Dolphins Subpoena, Request Nos. 37-38; Patriots Subpoena, Request Nos. 37-39; Saints Subpoena, Request Nos. 37-40; Jets Subpoena, Request Nos. 37-42; Raiders Subpoena, Request Nos. 37-38; Eagles Subpoena, Request Nos. 37-38; Steelers Subpoena, Request Nos. 37-42.

For the purpose of clarity, the Insurers expect that the Member Clubs' search for documents responsive to these, and ultimately *all* of the Requests, will extend, as required by applicable law and the terms of the Subpoenas, beyond ESI to include non-electronic tangible documents in each Member Club's possession, custody, or control. The provision of search terms for the purposes of assisting the Member Clubs in their initial collection of ESI (including but not limited to emails) responsive to the Subpoenas is not intended in any way to suggest that any Member Club's search may be limited to only ESI.

II. Deficiencies in Member Clubs' Responses and Objections to Subpoenas

The Insurers also wish to more fully outline various significant deficiencies in the Member Clubs' individual written objections and responses to the Subpoenas. To the extent we anticipate meeting and conferring with you further with respect to the Member Clubs' production of documents responsive to the prioritized Requests outlined above and the *general* deficiencies discussed below, we may, in the interest of efficiency, refrain for now from articulating all specific deficiencies in each Member Club's responses to specific requests. All of the Insurers' rights with respect to further objections to the responses and objections of any Member Club are reserved.

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As a preliminary matter, we note in discussing these issues that Article 31 of the New York Civil Practice Law and Rules ("CPLR") implements the strong policy of New York favoring disclosure of pre-trial evidence. It requires that "there shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action." CPLR § 3101(a) (emphasis added). See, ACG Credit Co. II v. Hearst, 102 A.D.3d 817, 818 (2d Dept. 2013) ("The statute should be construed liberally to permit the discovery of material that will sharpen the issues for trial and reduce delay and prolixity."). We also note, again, that save for a handful of exceptions, it has been a year since the Member Clubs received the Subpoenas. The Insurers' patience in waiting for substantive responses and the actual production of documents has been more than reasonable. Moreover, the Member Clubs' stated position that it has been burdensome to respond to the individual Subpoenas because your firm represents all 32 Member Clubs is not a valid basis to delay compliance with the Subpoenas. These are sophisticated business entities, and each has been served with a duly-issued court subpoena (in many instances a year ago). Each Member Club is obligated to timely respond or be in contempt. The fact that the Member Clubs all opted to coordinate their responses and hire common counsel in no way reduces any Member Club's individual obligation to timely comply. That coordination certainly does not operate to create a burden issue based upon the amount of work assumed by your firm in its representation of all 32 Member Clubs.

A. Response to Member Clubs' General Objections

Most of the Member Clubs (all but the three New York-based clubs) object to the Subpoenas to the extent they require the Member Clubs to produce documents outside the jurisdictions in which they are located. The Insurers do not understand this objection, especially given that the Member Clubs' counsel is located in New York and the ease of production associated with electronic discovery. Moreover, although the Insurers do not concede that any such accommodation is necessary, arrangements could be made for production in any jurisdiction if need be. Please confirm if any Member Club is refusing to search for, is withholding from production, or intends to withhold from production documents on this basis.

The Member Clubs also object generally to the Subpoenas to the extent that they seek information or documents protected by privilege, but indicate they will log such documents in "a form to be negotiated." The Member Clubs have been in possession of the Subpoenas for a year and numerous requests from the Insurers to describe the nature and the scope of purportedly privileged documents during meet and confer calls have been rebuffed. The Insurers request a traditional, document-by-document log from each of the Member Clubs identifying all documents that are responsive to the Subpoenas but are being withheld on the basis of privilege. Please confirm that the Insurers will receive a privilege log from each Member Club and advise when we can expect such logs to be provided.

The Member Clubs also object generally to the Subpoenas to the extent the information or documents sought constitute commercial, proprietary, or sensitive information, but indicate that they will produce such documents if the Insurers and the Member Clubs enter into an agreed-upon Protective Order. More than six months ago - by email dated February 27, 2018 -

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we provided a copy of the robust Confidentiality Order entered in this case, which was negotiated and drafted in concert with the NFL and which by its express terms extends to both parties to the litigation (i.e., the Insurers and the NFL Parties) *and* non-parties that produce documents or information. This Order provides extensive mechanisms to protect confidential and commercially sensitive information from improper disclosure. Thus, there is no need for a separate protective order to facilitate the Member Clubs' document productions.

The Member Clubs object generally to the Subpoenas to the extent they do not contain a temporal limitation. This case involves claims and allegations stretching back many decades and involving players, doctors, and other personnel from each of the Member Clubs over that time period. Accordingly, this is not valid discovery objection. The Member Clubs must undertake reasonable efforts to identify, collect, and produce all responsive documents in their possession, custody or control. Further, the Insurers do not understand the Member Clubs' reference to refraining from production of documents coming into their possession subsequent to July 19, 2011. Although we can hypothesize that this is a reference to the commencement of certain lawsuits in which the NFL and NFL Properties LLC were named as defendants, the Member Clubs are not parties to such lawsuits and, regardless, there is no basis for such a limitation on the Member Clubs' production obligations. All responsive, non-privileged documents are subject to production without regard to when the Member Club(s) came into possession of such documents. All purportedly privileged documents, whenever dated, must be appropriately logged.

Finally, the Member Clubs generally object to the Subpoenas to the extent that those received by each Member Club are purportedly "identical." This is a frivolous objection. Although the Subpoenas utilize similar terminology, the documents sought are each individual Member Club's documents, regardless of whether the same or similar documents may be in the possession, custody or control of multiple Member Clubs. Clearly, the 32 separate Member Club entities might possess (and, indeed, the Insurers expect that they do possess) a variety of different, but responsive, documents and information. Please confirm if any Member Club is refusing to search for, is withholding from production, or intends to withhold from production documents on this basis.

B. Response to Member Clubs' Objections to Definitions and Instructions

The Member Clubs object to the definition of "NFL" as overbroad and unduly burdensome, and state that the Member Clubs interpret the term "NFL" to mean only the defendants in the actions pursuant to which the Subpoenas were issued. This limitation is not acceptable. The Insurers object to this limiting interpretation of the term "NFL," and note that the definition of "NFL" set forth in Exhibit B to the Subpoenas is tailored to capture responsive documents on a host of relevant issues. Please confirm if any Member Club is refusing to search for, is withholding from production, or intends to withhold from production documents on this basis.

The Member Clubs each assert identical objections to the definitions of "MBTI Committee" and "Head, Neck, and Spine Committee" as vague, overbroad, and unduly burdensome. The Member Clubs further state that they interpret "MTBI Committee" and "Head,

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Neck, and Spine Committee" to mean "the committee bearing that name and any individual member of that committee that is acting solely in his or her capacity as a member of that committee." The Insurers do not consent to a limitation on individual members of the committee only when acting "solely" in their capacity as a member of that committee (as ostensibly determined by the Member Clubs), and object to the extent the Member Clubs do not recognize that the definitions of "MTBI Committee" and "Head, Neck, and Spine Committee" include subcommittees, successor committees, or any related committees. Please confirm if any Member Club is refusing to search for, is withholding from production, or intends to withhold from production documents on this basis.

The Member Clubs each also object to the definition of "Alleged Brain Injury" as vague, ambiguous, and overbroad, but do not explain in what respect that definition is vague, ambiguous, or overbroad. See, e.g., Jaguars Response Nos. 2-18. The Insurers' definition of "Alleged Brain Injury" set forth in Exhibit B to the Subpoenas is tailored to capture responsive documents on the issues involved in this matter and is used in other discovery in this litigation. Please confirm if any Member Club is refusing to search for, is withholding from production, or intends to withhold from production documents on this basis.

The Member Clubs each have objected to Instruction No. 3 as premature and unduly burdensome, and to Instruction No. 4 as unduly burdensome. In most instances (i.e., with respect to 24 of the 32 Member Clubs) these objections were asserted almost a year ago. Please confirm if it continues to be any Member Club's position that compliance with Instruction No. 3 (i.e., stating whether or not documents responsive to the Requests exist and if so whether or not they will be produced) is "premature" (or unduly burdensome). Regarding Instruction No. 4, we note again that in most instances the Subpoenas were served over a year ago, but not one document has been produced by any one of the Member Clubs and, although you have made vague references to "privileges" during our various meet and confer calls, no Member Club has provided a privilege log.

C. Response to Member Clubs' Objections to Document Requests

1. General Issues

With respect to various individual Requests, the Member Clubs make numerous objections to producing material that "may reasonably be expected to be in the custody of the NFL." *See, e.g.*, Non-Party Jacksonville Jaguars, LLC Objections and Response to Plaintiffs' Non-Party Subpoenas ("Jaguars Response"), Response to Document Request Nos. 1-3, 5-29, and 34. This is not a valid discovery objection in this case. Member Club documents have not been produced by the NFL. Moreover, even if the NFL has produced or produces documents that potentially overlap with those in the possession of the Member Clubs, the risk of duplication is outweighed by the risk of the NFL and/or a Member Club having lost responsive documents. Through these requests, the Insurers seek responsive documents in the *Member Clubs'* possession, not the NFL's.

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Similarly, the Member Clubs object to numerous Requests on the ground that the Insurers have propounded discovery requests to the NFL that purportedly cover the scope of the Request. *See, e.g.*, Jaguars Response Nos. 1-3, 5-12, 14-29, and 34. As discussed at length during several of our meet and confer calls, the fact that the Insurers have served discovery on the NFL Parties does not negate the relevance of responsive documents in *Member Clubs'* possession. The requests are not duplicative and, in any event, the Insurers may or may not obtain the requested information from the NFL. Further, information in the Member Clubs' possession could be independently relevant to the issues in this matter, or demonstrate discrepancies in the NFL Parties' documents. Whether the NFL may potentially possess or eventually produce some of the same documents as any particular Member Club is entirely irrelevant to the Member Clubs' own obligation to respond to the Subpoenas. Kapon v. Koch, 23 N.Y.3d 32, 36 (2014) (holding that there is no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source ... so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty"); Anheuser-Busch, Inc. v. Abrams, 71 N.Y.2d 327, 331-332 (1988) (holding that "[a]n application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant to any proper inquiry"); Velez v. Hunts Point Multi-Serv. Ctr., Inc., 29 A.D.3d 104, 112 (1st Dept., 2006) ("[T]he burden of establishing that the requested documents and records are utterly irrelevant is on the person being subpoenaed"). As also discussed during our August 30, 2018 call (and several earlier calls), the fact that some documents have been produced by the NFL Parties, and that the Insurers and the NFL Parties are engaged in initial motion practice with respect to certain discovery disputes, does not in any way lessen the Member Clubs' own obligations to comply with the Subpoenas.[4] The Member Clubs' objections based upon what the NFL might possess and/or what discovery has been sought from the NFL are, thus, invalid.

The Member Clubs also assert numerous objections to producing materials that are in their possession but not in the NFL's possession, as "not reasonably related to claims or defenses asserted in this Action." There is no merit to this objection. See id. It is improper to assume that the only relevant documents regarding "Alleged Brain Injuries" and the claims asserted again the NFL Parties that are the subject of the declaratory judgment action from which the Subpoenas emanate are documents which the NFL retained or currently possesses. For example, a Member Club may have in the past conducted research which was transmitted the NFL and had communications with the NFL regarding these topics, even if the NFL did not retain the relevant documents and/or communications. This same objection is often lodged in tandem with an objection to producing material that "may reasonably be expected to be in the custody of the NFL." *See, e.g.*, Jaguars Response Nos. 1-2, 5-23, 26-29, and 34. The Member Clubs thus

[4] Although the scope of the NFL Parties' production to date is of no consequence whatsoever to the Member Clubs' obligation with respect to the subpoenas that have been served upon them, we also discussed during the last call that the NFL Parties' production to date has been lacking in a number of significant respects and in no way alleviates the Insurers' need to obtain the documents that they seek from the Member Clubs.

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suggest that the information sought may be in the NFL's custody, then in the same response suggest the same information is irrelevant to the extent it is not in the NFL's possession.

The Member Clubs assert a number of objections to the lack of a temporal limitation in the Requests. *See, e.g.*, Jaguars Response Nos. 1-19, 21, 29-36. Subject to a reservation of rights, the Insurers are willing to limit all Requests, except where otherwise specified, to documents that post-date the later of 1960 (when the first insurance policy at issue in this matter was issued) or the date the Member Club (or its predecessor) came into existence through to the present. Please advise whether the Member Clubs are amenable to such a limitation.

In nearly all of the Member Clubs' responses to individual Requests, the Member Clubs state that "if compliance is required, Plaintiffs should bear the cost of production incurred by the [Member Club] to comply with this Request." The Member Clubs have offered no authority to support their contention. In any event, the Member Clubs are sophisticated and financially robust corporate entities well-equipped to respond to subpoenas. Unlike many typical non-party subpoena recipients, the Member Clubs likely have a direct economic interest in the outcome of this case. Moreover, and as discussed, each of the subpoena requests is appropriate and tailored to the needs of this case. Therefore, the Member Clubs should produce the requested documents at their own expense. See, Dow Chem. Co. v. Reinhard, 2008 U.S. Dist. LEXIS 35398, (S.D.N.Y. April 29, 2008).

The Member Clubs make several objections to producing purportedly private, personal medical information allegedly protected by the Health Insurance Portability And Accountability Act of 1996 ("HIPPA"), the Americans with Disabilities Act ("ADA"), various state statutes, and alleged federal and state constitutional rights to information privacy and confidentiality concerning personal medical information or the like. *See, e.g.*, Jaguars Response No. 10-19. As discussed above, a strict confidentiality order exists for this matter, which applies to documents that the Member Clubs choose to designate as confidential. If the Member Clubs have concerns about specific, protected personal health information being produced, please let us know, and we can discuss the potential for redaction. Accordingly, these objections are not a valid basis upon which to withhold responsive documents.

2. Response Regarding Specific Requests - Common to all Member Clubs

Each of the Member Clubs' responses to Request Nos. 1-36 are substantively identical or nearly identical to one another. The following section thus addresses these responses collectively. As noted, the Insurers are willing to focus our meet and confer efforts at present on the prioritized Requests and General issues outlined above, but include the specific issues below so that the remainder of these issues can be addressed in due course.[5]

[5] The Insurers reserve their rights to raise any and all of their additional concerns at any point in the future.

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Request Nos. 5, 6, 7, and 9. As noted, the Member Clubs have failed to explain why the definitions of "MTBI Committee," "Head, Neck, and Spine Committee," and "Injury and Safety Panel" are vague and overbroad. If, however, the Member Clubs agree that the definitions of "MTBI Committee," "Head, Neck, and Spine Committee," and "Injury and Safety Panel" include individual doctors who are or were members of those committees, the Insurers would agree that this Request is duplicative of Request Nos. 5, 6, and 7. If the Member Clubs do not agree with the foregoing, then Request No. 9 is not duplicative. In any event, subject to a reservation of the right to seek additional discovery if necessary, the Insurers agree to limit the time period of Request No. 9 to the period from 12 months prior to the respective formations of the "MTBI Committee," "Head, Neck, and Spine Committee," and "Injury and Safety Panel" to the present.

Request No. 8. The Insurers are amenable to limiting the term "equipment manufacturers" to the following entities and their related companies for the present: Riddell Sports Group, Schutt Sports, Protective Sports Entertainment, Protective Sports Equipment, Defend Your Head, and Rawlings Sporting Goods Company. If you require clarification regarding which related entities are referred to please let us know. The Insurers reserve the right to amend this list as this matter progresses.

Request Nos. 11, 13. 14-18. The Member Clubs' have not explained their confusion with the phrase "current or former players." Please advise as to what, if any, further explanation is required to help you better understand the scope of that phrase. With respect to Request No. 13 specifically, the Insurers seek information regarding the players' workers compensation claims because the Insurers require data on bodily injury to each player as such information is relevant to various claims and defenses at issue in the litigation the Insurers and the NFL Parties, without regard to which entity possess the information.

Request Nos. 14 and 15. The Member Clubs object to producing Documents and Communications involving potential or actual claims or lawsuits against the NFL on grounds these documents might reasonably be expected to be in the custody of the NFL. As discussed above, however, this is not a valid discovery objection in this matter.

Request Nos. 19 and 21. Subject to a reservation of rights, the Insurers agree to limit these Requests to the time period from the respective creation of each Member Club (or any predecessor) forward.

Request No. 21. Notwithstanding the impropriety of the Member Clubs' objections, see Kapon *supra*, information regarding the Member Clubs' concussion management protocols is relevant to the claims and defenses at issue in this case. Whether copies of such documents are now, or ever were possessed by the NFL is *not* relevant to the Member Clubs' independent obligation to respond to the Subpoenas. The NFL has not produced Member Clubs' documents. Moreover, the Member Clubs first suggest that the information sought in Request No. 21 "may reasonably be expected to be in the custody of the NFL," and later suggest that the same

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information is irrelevant because the same is not in the NFL's possession. This is a prime example of the improper dichotomy referenced above, and the Member Clubs cannot have it both ways.

Request Nos. 22, 23, 26, and 27. Notwithstanding that the NFL's potential possession (or lack thereof) of copies of any documents is irrelevant to the Subpoenas (and the Member Clubs' obligations with respect to them), the Member Clubs have not articulated how or why defense and settlement information specific to the Member Clubs would "reasonably be expected to be in the custody of the NFL." If individual Member Clubs (or the Member Clubs collectively) were involved in the settlements, please so advise. Please also confirm if any Member Club is refusing to search for, is withholding from production, or intends to withhold from production non-privileged documents that are otherwise responsive to these Requests on this basis. Again, all documents over which privilege is being asserted must be properly, and promptly, logged.

Request No. 29. Documents and Communications related to indemnity agreements and/or the Constitution and Bylaws of the NFL are relevant to numerous claims and defenses in the underlying litigation. Such documents may inform the extent, if any, to which the NFL's request for defense and indemnification payments from the Insurers for the MDL settlement is covered, whether the settlement was reasonable, and/or whether the NFL, in applying for the insurance at issue in this matter, misrepresented the Member Clubs' indemnification obligations with respect to judgments for damages and injuries such as those involved in the head trauma lawsuits (in which case the interests of the NFL and Member Clubs obviously are not aligned). The Insurers fail to understand what, if any, further explanation could be required to clarify the term "indemnity agreements." For the avoidance of doubt, the Insurers seek any document that in any way references any indemnity obligation any Member Club may have to the NFL or NFL Properties.

Request No. 30. As noted, no further explanation is required to clarify the simple term "indemnity agreements." These documents are relevant to numerous claims and defenses at issue between the Insurers and the NFL entities. As noted above, the Insurers are willing to limit the definition of "equipment manufacturers" to those stated above, while reserving the right to further supplement this list as this matter progresses.

Request No. 31. The Insurers agree to limit this Request to the time period from the inception and/or invention of ProCap forward. Please also note that "ProCap" needs no definition because it is a product/technology name. However, to avoid confusion and future objections, "ProCap" refers to the padded helmet attachment product designed to limit and/or prevent concussions, and worn by players such as Mark Kelso, formerly of the Buffalo Bills.

Request No. 32. The Insurers note that the book *League of Denial* was published in 2013. Thus, there is no need to impose a temporal limitation on this request because any Documents or Communications relating to *League of Denial* would have been created within the time period leading up to its publication and thereafter. For simplicity and compromise, the Insurers are willing to limit this request to 2010 forward.

Request No. 33. The Insurers note that the film *Concussion* was released in 2015. Thus, there is no need to impose a temporal limitation on this request because any Documents or Communications relating to *Concussion* would have been created within the time period leading up to its release and thereafter. For simplicity and compromise, the Insurers are willing to limit this request to 2013 forward.

Request No. 34. There is no need to impose a temporal limitation because the request provides the date of the NFL concussion summit, June 19, 2007. For clarity's sake, the "concussion summit" refers to a league-wide meeting, which included representatives from all 32 Member Clubs and NFL administrators, held in Chicago, Illinois on June 19, 2007. Roger Goodell allegedly organized the concussion summit in his first year as the NFL's Commissioner.

Request No. 35. The Insurers agree to limit this Request to the time period from each individual Member Clubs' (or their predecessors') inception forward. Further, and notwithstanding the impropriety of the Member Clubs' objections, *see Kapon supra*, whether the NFL was or is in possession of the information requested is irrelevant to whether the information requested is reasonably related to the claims or defenses asserted in this matter. Specifically, the documents requested are potentially relevant to various coverage questions in this matter including that the existence of other sources of insurance (e.g., additional insured coverage) may be relevant to the NFL Parties' claim for coverage from the Insurers for defense costs and indemnity with respect to the concussion lawsuits and the settlement.

3. Response Regarding Specific Requests - Particular Member Clubs

The Insurers served certain Requests on several of the Member Clubs that are unique to that specific club. As an initial matter, to the extent that each of these Member Clubs asserted objections to these particular Requests on several of the same grounds discussed herein above in the context of "General Issues" with respect to the Member Clubs' responses (see section III(A)), the Insurers incorporate their responses to these objections as previously stated. Further, each of these Member Clubs has asserted an identical objection to the Requests particular to them on the basis that the subject matter of these requests is not related to claims or defenses asserted in the coverage litigation and appear (according to the Member Clubs) "solely designed to harass and inflict financial burden" on the Member Clubs. These objections are incorrect, meritless, and improper, and the Insurers vehemently deny the charge. This litigation involves, *inter alia*, significant disputes over insurance coverage arising out of former NFL players' allegations that they have suffered various injuries as a result of head trauma experienced while playing for NFL teams including each of those upon whom particular Requests have been served. Permissible discovery is broad, and the documents and information sought through these requests is clearly relevant claims and defense at issue. Each of these requests are addressed below.

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Atlanta Falcons Football Club, LLC ("Falcons")

Request Nos. 37-38. Ray Easterling was diagnosed post-mortem with signs of Chronic Traumatic Encephalopathy ("CTE"), one of the major neurological degenerative disorders alleged by the plaintiffs to be associated with concussions. He played for eight seasons with the Falcons. Through his estate or personal representatives Mr. Easterling is a named plaintiff in the MDL lawsuit and a member of the settlement class, for which the NFL seeks insurance coverage. These Requests are plainly relevant to the issues in this litigation.

Chargers Football Company LLC ("Chargers")

Request Nos. 37-38. Junior Seau was diagnosed post-mortem with CTE. Having opted out of the class settlement, Mr. Seau's family and personal representatives are pursuing their own lawsuits against the NFL Parties for which the NFL Parties seek coverage from the Insurers. Mr. Seau played 13 of his 16 NFL seasons with the Chargers. These Requests are plainly relevant to the issues in this litigation.

Chicago Bears Football Club, Inc. ("Bears")

Request Nos. 38-41. Merril Hoge allegedly suffered several concussions while playing for the Bears during the 1994 season, and later filed a lawsuit against Dr. John Munsell, the Bears' team doctor, alleging that Dr. Munsell permitted him to return to the field despite signs of post-concussion symptoms. Similarly, Dave Duerson was diagnosed post-mortem with CTE. Mr. Duerson played seven seasons with the Bears. These Requests are plainly relevant to the issues in this litigation. Both Mr. Hoge and Mr. Duerson, through his estate or personal representatives, are members of the settlement class for which the NFL Parties seek coverage.

Dallas Cowboys Football Club, Ltd. ("Cowboys")

Request Nos. 37-39. As noted this litigation involves disputed claims for insurance coverage arising out of former NFL players' various alleged injuries as a result of head trauma experienced while playing for NFL teams including the Cowboys and the NFL's collective knowledge regarding these injuries and their alleged long-term ramifications. In this context, the contention that Cowboys players experienced zero concussions from 1996 to 2001 bears on issues relevant to this litigation. Further, Jerry Jones has served on the NFL's Health & Safety Advisory Committee and the NFL's Executive Committee. Finally, Troy Aikman allegedly suffered a number of concussions during his 12 years with the Cowboys and is a member of the settlement class for which the NFL Parties seek coverage. These Requests are plainly relevant to the issues in this litigation.

Forty Niners Football Company, LLC ("49ers")

Request Nos. 37-38. In the context of the claims at issue, the contention that 49ers players experienced zero concussions from 1997 to 2000 bears on issues relevant to this

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litigation. Further, Steve Young allegedly suffered multiple concussions during his 13 seasons with the 49ers and is a member of the settlement class for which the NFL Parties seek coverage. These Requests are plainly relevant to the issues in this litigation.

Green Bay Packers, Inc. ("Packers")

Request Nos. 37-40. As noted the claims at issue in this case involve retired players' various allegations regarding injuries sustained while playing for all of the NFL Clubs, including the Packers. Information about the Packers' corporate structure may reveal the identity of persons with knowledge related to the issues in this litigation. Further, documents and communications that may have been made or provided to the Packers' board of directors, executive committee, and/or shareholders related to the underlying MDL class action, for which the NFL seeks coverage from the Insurers, are certainly relevant to the issues in this litigation. Although the Insurers are unclear as to what, if any, privileged material could be at issue with respect to their request for minutes, notes, agenda, and audio and video recordings of the Packers' annual shareholder meetings, as noted above, the Packers can include this material on a privilege log if - incorrectly - they refuse to produce it.

Kansas City Chiefs Football Club, Inc. ("Chiefs")

Request Nos. 37-38. Jovan Belcher committed suicide at the Chiefs' training facility, and was diagnosed post-mortem with signs of CTE. Mr. Belcher played four seasons with the Chiefs. These Requests are plainly relevant to the issues in this litigation.

Miami Dolphins, Ltd. ("Dolphins")

Request Nos. 37-38. Dan Marino filed a lawsuit against the NFL in or around June 2014 seeking damages for injuries allegedly arising from concussions that he sustained while playing in the NFL. While that lawsuit was later dismissed, he is now a member of the settlement class for which the NFL Parties seek coverage. Mr. Marino played all 17 seasons of his NFL Career with the Dolphins. These Requests are plainly relevant to the issues in this litigation.

New England Patriots, LLC ("Patriots")

Request Nos. 37-39. Kevin Turner was diagnosed with amyotrophic lateral sclerosis ("ALS") during his life and CTE after he passed away. He was a leading plaintiff in the MDL action and, through his estate or personal representatives, is a member of the settlement class for which the NFL Parties is seeking coverage. Mr. Turner played for the Patriots for three seasons. Ted Johnson allegedly suffered numerous concussions during his NFL career and allegedly experienced post-concussion symptoms after his career ended. Having opted out of the class settlement, Mr. Johnson pursued his own lawsuit against the NFL Parties for which the NFL Parties seek coverage from the Insurers. Although no substantive information regarding this has been provided to the Insurers, it appears that Mr. Johnson's lawsuit was recently settled.

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Mr. Johnson played for 10 seasons with the Patriots. These Requests are plainly relevant to the issues in this litigation.

New Orleans Louisiana Saints, LLC ("Saints")

Request Nos. 37-40. The "Bountygate" scandal involved allegations that certain Saints players were paid bonuses for intentionally trying to injure opposing teams' players, including allegedly trying to focus on players with histories of concussions. Steve Gleason has been diagnosed with ALS and his experiences with living with the disease over the course of a five-year period were captured in a 2016 documentary film entitled *Gleason*. Mr. Gleason played for six seasons with the Saints. These Requests are plainly relevant to the issues in this litigation.

New York Jets, LLC ("Jets")

Request Nos. 37-42. The claims for which coverage is being sought from the Insurers - which were brought on behalf former NFL players' including those allegedly injured while playing for the Jets - include allegations that the NFL's MTBI Committee knew of certain concussion risks yet concealed those risks - with the NFL's knowledge - by publishing incomplete or inaccurate medical studies. Dr. Elliot Pellman served as team doctor for the Jets *and* chaired the MTBI Committee, and Dr. William Barr served as a neuropsychology consultant to the Jets. Wayne Chrebet allegedly suffered numerous concussions during his NFL career, which consisted of 11 seasons with the Jets. Similarly, Al Toon allegedly suffered from post-concussion syndrome. Mr. Toon played for the Jets for eight seasons. Mr. Chrebet and Mr. Toon are both members of the settlement class for which the NFL Parties seek coverage. These Requests are plainly relevant to the issues in this litigation.

Oakland Raiders, LLP ("Raiders")

Request Nos. 37-38. Ken Stabler was diagnosed post-mortem with CTE. Mr. Stabler played 12 seasons for the Raiders. Through his estate or personal representatives, Mr. Stabler is a member of the settlement class for which the NFL Parties seek coverage. These Requests are plainly relevant to the issues in this litigation.

Philadelphia Eagles, LLC ("Eagles")

Request Nos. 37-38. Andre Waters was diagnosed post-mortem with CTE. Mr. Waters played for 10 seasons with the Eagles. Through his estate or personal representatives, Mr. Waters is a member of the settlement class for which the NFL Parties seek coverage. These Requests are plainly relevant to the issues in this litigation.

Pittsburgh Steelers, LLC ("Steelers")

Request Nos. 37-42. Mike Webster, Justin Strzelczyk, and Terry Long were diagnosed post-mortem with CTE. Messrs. Webster, Strzelcyzk, and Long played for the Steelers for fifteen, nine, and eight seasons respectively and, through their respective estates or personal

representatives, are each members of the settlement class for which the NFL Parties seek coverage. These Requests are plainly relevant to the issues in this litigation.

We look forward to hearing from you on these issues, and to receiving the Member Clubs' initial productions of documents and, if necessary, privilege logs. In the meantime, during our last meet and confer call (on August 30, 2018) we requested your commitment to discuss the Member Clubs' initial reactions to this letter within seven business days of receipt. You declined to do so. Nevertheless, we propose a call to further discuss these issues during the afternoon of either October 1st or October 2nd. If these particular times do not work with your schedule, you are invited to propose alternative times during that week.

Very truly yours,

Mark F. Hamilton
Partner
For Kennedys CMK

cc: Insurer Counsel (via email)

SEARCH TERMS[1]